UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 160, LOCAL LODGE 289,

and

Cases: 19-CD-502; 19-CD-506

SSA MARINE, INC.,

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION.

CHARGING PARTY'S REQUEST TO CORRECT ANSWERING BRIEF

Charging Party SSA Marine, Inc. ("Charging Party" or "SSA"), by and through its counsel, respectfully requests that the Executive Secretary substitute the attached corrected page of text from its Answering Brief in Reply to the Respondent's Cross-Exceptions to the ALJ's Decision for the same page from the Answering Brief that SSA filed yesterday.

An inadvertent error occurred in the middle paragraph of the third page of the brief that makes that portion of the brief more difficult to read.

The corrections are semantic in nature and do not alter the content of the brief. In the interest of making the arguments as clear as possible for the Board, Charging Party respectfully requests that the Executive Secretary replace the existing page 3 of its Answering Brief with the page attached to this Request.

Dated this 12th day of July 2012.

Submitted by:

James J. McMullen, Jr.

Joseph Sbuttoni

Gordon & Rees LLP

101 West Broadway, Suite 2000

San Diego, CA 92101

Tel: 619-696-6700 / Fax: 619-696-7124

Attorneys for SSA Marine, Inc.

"SSA can be called many things, but certainly not a 'helpless victim'" (Respondent's Brief in Support of Cross-Exceptions, pg. 6 [also referred to herein as "Respondent's Brief"]); "SSA is not like an employer '... caught between the devil and the deep blue" (Id.); and "Prior to changing its assignment of work in this case, and in devious contemplation of its breach of contract with IAM, SSA obtained an indemnity agreement from PMA." (Id., pg. 5.)

Certainly, the record indicates that SSA found itself caught between its long standing collective bargaining relationships and its multiemployer association that had the ability to dictate its labor policy. SSA properly invoked the Board's processes to resolve the resulting jurisdictional dispute.

To the extent that Respondent's Cross-Exceptions argue that the current proceeding is not properly before the Board, they are procedurally flawed. These alleged improper acts by SSA (or any other employer or party) had to be raised and resolved as a threshold issue long ago. The Cross-Exceptions should be rejected in their entirety based on this procedural deficiency alone. However, and more importantly, the Respondent's Cross-Exceptions also lack substantive legal merit.

A. Respondent's First Cross-Exception Fails Because Board Law Prohibits the Losing Party to a 10(k) Decision from Attempting to Recover Monetary Damages from the Employer Responsible for Assigning the Work.

IAM lost the 10(k) decision that upheld SSA's assignment of the disputed work. Now IAM seeks damages against SSA. However, the IAM cites no case that supports the novel proposition that after losing a 10(k) decision it should be allowed to maintain an action for monetary damages against the employer responsible for assigning the disputed work.

In fact, <u>Carpenters Local 33 (Blount Bros.)</u>, 289 NLRB 1482 (1988), and <u>Ironworkers District Council (Hoffman Construction)</u>, *supra*, contradict that contention.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SSA MARINE through its related company SSA PACIFIC,

and Cases: 19-CD-502/506

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 160, LOCAL LODGE 289, AFL-CIO.

Proof of Service

I hereby certify that on July 12, 2012, I caused the original of the foregoing Petitioners' **CHARGING PARTY'S REQUEST TO CORRECT ANSWERING BRIEF** to be filed with the National Labor Relations Board via e-filing to:

Lester Helzer Executive Secretary National Labor Relations Board 1099 14th Street Northwest, Room 11602 Washington, D.C. 20570-0001

On this same date, I caused a true and correct copy of the same to be served via email to:

John Fawley
Anne Pomerantz
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue, Room 2948
Seattle, WA 98174
john.fawley@nlrb.gov
anne.pomerantz@nlrb.gov

Robert S. Remar Leonard Carder, LLP 118 Franklin Street, Suite 201 San Francisco, CA 94109 <u>rremar@leonardcarder.com</u>

Jacob Black Robblee Brennan Detwiler 2101 Fourth Avenue, Suite 1000 Seattle, WA 98121 jblack@unionattorneysnw.com I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on July 12, 2012, at San Diego, California.

Patrick R. Langevin

Gordon & Rees LLP

101 West Broadway, Suite 2000

San Diego, CA 92101

619-696-6700